

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRTIETH DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 23458 of 2003

Between:

- 1.K.Chandramouli S/o. Guruvaiah, Aged: about 56 years
2. K.Shankar Reddy S/o. Narayana, Aged: about 57 years
3. P.Janardhan s/o. Narayana, Aged: about 57 years.
4. Krishnaayer Raju s/o. Ramanujayya, Aged: about 52 years
5. N.Raja Reddy s/o. Rajaram, Aged: about 56 years.
6. P.Narsaiah s/o. Narsaiah, Aged: about 57 years.

All the petitioners are working as Additional Assistant Engineers, in A.P.Northern Power Distribution Co.Ltd., Warangal

..... PETITIONERS

AND

- 1 A.P.Northern Power Distribution Co.Ltd., rep.by its Chairman-Cum-Managing Director, Warangal
- 2 The Chief General Manager (HRD),Northern Power Distribution Co.of A.P.Ltd.,Warangal District

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to to issue writ or order or direction, especially one in the nature of writ of Mandamus, (1) declaring the action of the respondents in not following the ration of 3:1 while filling up the posts of Assistant Divisional Engineers, as contemplated under Note(1) of Regulation 6(b), part-III/Annex.III of APSEB service Regulations, as illegal and arbitrary; (ii) Consequently direct the respondents to follow the ration of 3:1 strictly, While effecting the promotions to the post of Assistant Divisional Engineer, as contemplated under Note(1) of Regulation 6(b), Part-III/Annexure-III of APSEB Service Regulations;

For the Petitioner:MR.K.VASUDEVA REDDY

For the Respondent No.: MR.S.RAVINDRANATH

The Court Made the Following :

Petitioners are Additional Assistant Engineers working in the 1st

respondent Company, which is a successor to the erstwhile A.P.S.E.B. The basic grievance in the writ petition is that despite the fact that 48 Assistant Engineers (graduate engineers) having been promoted as Additional Divisional Engineers (Technical) by proceedings dated 27-09-2002, only 12 Additional Assistant Engineers (non-graduate engineers) have been so promoted contrary to the operative service regulations, which the petitioners contend provide a quota of one vacancy for being filled up by Non-graduate Engineers/Additional Assistant Engineers for every three posts filled up from the channel of Assistant Engineers/Graduate Engineers. Since 48 Graduate Engineers have been promoted, the petitioners contend that 16 Non-graduate Engineers have been promoted as against 12 only, who were given promotions. It is also contended that subsequent to the proceedings dated 27-09-2002, by another proceeding dated 18-12-2002 three more Graduate Engineers were promoted. Thus, in all, 51 Graduate Engineers were promoted and if the aforesaid ratio were to be followed, 17 Non-graduate Engineers ought to have been promoted as Additional Divisional Engineers while only 12 so have been promoted. On this factual substratum, the grievance of the petitioners is founded in support of the relief sought for in the writ petition viz., declaration of the action of the respondents in not following the ratio of 3:1 in the filling up posts of Assistant Divisional Engineers as contemplated under Note (1) of Regulation 6 (b), Part-III/Annex.III of A.P.S.E.B. Service Regulations (for short 'the Regulations) as illegal and for a consequential direction to the respondents to follow the 3:1 ratio strictly.

According to the Regulation 6 (a) of the Regulations Part-III, the method of recruitment to the category of Assistant Divisional Engineers in various branches of A.P.S.E.B. Engineering Services is by way of direct recruitment and by promotion from amongst the full members or approved probationers in the category of Assistant Engineers and Additional Assistant Engineers/Draughtsman Grade-I. The Regulations were amended in B.P. (P & G-Per) Ms.No. 82 dated

17-05-1993. Prior to these amendments and pursuant to the earlier amendments in B.P. (P & G-Per) Ms.No.12 dated 08-04-1993 qua the regulations 6 (b) of the Regulations, 20% out of vacancies arrived at are reserved to be filled by limited recruitment. In order to improve the efficiency in the higher cadres of A.P.S.E.B. services, the Board had decided to introduce certain procedure for filling up the vacancies by way of limited recruitment. Accordingly, in exercise of powers under Section 79 of the Electricity Supply Act, 1948 (Central Act LIV of 1948) amendments were made by way of B.P. (P & G-Per) Ms.No. 82 dated 17-05-1993. As per the amendments out of five vacancies successively arising in the category of Assistant Divisional Engineers/Assistant Executive Engineers, the first vacancy shall be filled up by the candidate selected through the limited recruitment, the next three by promotion from the Assistant Engineers and fifth by promotion from the Additional Assistant Engineers and Draughtsman Grade-I. These amendments further substitute 'limited recruitment' by 'direct recruitment'. As a result, the direct recruitment to the post of Assistant Divisional Engineer was dispensed with. All appointments to the post of Assistant Divisional Engineers are, therefore, from inservice candidates. To impregnate the higher cadre of Assistant Divisional Engineers in the Engineering services with the cream from amongst the Graduate Engineers to off-set the diminution of efficiency caused of eschewing direct recruitment, the A.P.S.E.B. has mandated that 20% of vacancies i.e., the first of the five vacancies in a unit of five vacancies should be filled up by a candidate belonging to the Graduate Engineers category by the method of limited recruitment. The amendment also provided the method of pursuing the process of limited recruitment; and the procedure mandated by the limited recruitment as per the amended Regulations is as under:-

Asst.,Divl. Engineer/ Assistant Executive Engineer	Limited Recruit- ment	i. 20% of the total vacancies shall be filled through limited recruitment by candidates from the merit list, referred to in clause (ii) below, selected from eligible Assistant Engineers to the extent of 4 times of the vacancies as per seniority list of the Asst. Engineers. The seniority list will be prepared after screening by the Departmental Promotion Committee by excluding those not cleared on account of unfitness or disciplinary cases pending. (ii) A merit list of candidates selected for recruitment shall be drawn based on the performance in a Written Test and after giving weightages as detailed below: Marks:Performance in the Written Test .. 50Weightage for relative seniority .. 40Acquisition of P.G. qualification .. 5Annual Performance Reports .. 5 (iii) A candidate coming up in the merit list for limited recruitment shall not be placed lower in rank than/that which he/she would have otherwise had, but for his/her inclusion in the merit list.
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After 17-05-1993, therefore, the erstwhile APSEB or its successor, the 1st respondent-Company, which has adopted the Regulations is required to identify units of five (5) to classify existing vacancies in the cadre of Assistant Divisional Engineers into units of five (5) and to fill up each unit in accordance with the discipline ordained by Regulation 6 (b) of the Regulations Part-III. Out of every five (5) vacancies successively arising, the first should be recruited by the method of limited recruitment from amongst the Graduate (Executive) Engineers, the next three (3) by promotion from Assistant Engineers, while the fifth by promotion from the category of Additional Assistant Engineers and Draughtsman Grade-I.

The 1st respondent's proceedings in NOO.O (CGM—HRD) Rt.No.120 dated 27-09-2002 reads as under:

“:ORDER:

Under the Regulation 14 (A1) APSES Service Regulations Part.II as adopted by A.P. Transco and consequently by DISCOMS, Assistant Engineers/AAEs as per Annexure-I & II are promoted temporarily to act as A.D.E./Elecl with effect from the date of assumption of charge.

2. The promotions ordered in para (1) above are purely temporary and liable to be terminated at any time without notice and without assigning any reasons thereto. The promotions orders in Para (1) above are without prejudice to the seniority of the officers that will emerge after review of FCG list of Assistant Engineers of Electricity Department as on 01-11-1950 is finalized.

3. The promotions ordered in para (1) above are liable to be reviewed in the light of judgment in writ petition No. 4219 of 1978 and writ petition Nos. 2360-91/83 filed by retired officers of Board and pending in the Supreme Court and also subject to the recall of writ petition 3058/91 pending in the High Court of A.P.

4. The controlling officers are requested to relieve above A.Es/AAEs by making local arrangements on 30-09-2002 pending posting of substitutes, in order to assume charge of promotion as A.D.E. at the place of posting ordered.

5. They are requested to assume charge accordingly after obtaining re-posting order from the office noted in column No.4 of the annexure and after proper relief from the present place of working.”

Two Annexures are appended to the order of the 1st respondent dated 27-09-2002. Annexure-I lists 48 Assistant Engineers, who are promoted as Assistant Divisional Engineers, while Annexure-II enumerates 12 Additional Assistant Engineers (Non-graduate Engineers), who are promoted as Assistant Divisional Engineers. Nothing in the order dated 27-09-2002 permits an inference that any of the 48 Assistant Engineers promoted as Assistant Divisional Engineers have been appointed to the higher post by the method of limited recruitment. Mr. Ravindranath, learned standing counsel for the respondents fairly concedes, on instructs,

that none of the 48 Assistant Engineers promoted as Assistant Divisional Engineers, as shown in Annexure-I to the 1st respondent's order dated 27-09-2002, have been appointed to the higher post after a process of evaluation of their performance in the manner ordained by the regulations amended in B.P. (P & G-Per.) Ms.No.82 dated 17-05-1993. The respondents have not placed before this court any proceeding exempting the 1st respondent from its obligation to tailor its appoints/promotions to the category of Assistant Divisional Engineers directly in accordance with the Regulations. As no appointment to the post of Assistant Divisional Engineer as, therefore, been made by the process of limited recruitment in the proceedings dated 27-09-2002 of the 1st respondent, all promotions reflected in Annexure-I of the 1st respondent's proceedings dated 27-09-2002 must be considered and held to be promotions of Assistant Engineers in the normal course and not by way of limited recruitment.

In an affidavit dated 21-03-2004 Mr. D. Nageswara Rao, Chief General Manager (HRD), the 2nd respondent in the writ petition, has stated at paragraph No.3 of the affidavit that of the 48 Assistant Engineers promoted as Assistant Divisional Engineers in the 1st respondent's proceedings dated 27-09-2002 are included 12 Graduate Engineers, who are promoted under limited recruitment based on merit and performance and that they figured at serial Nos.1, 5, 9, 13, 17, 21, 25, 29, 33, 37, 41 and 45. In the light of the admission on behalf of the respondents that no limited recruitment process as ordained by the service Regulations were followed, this statement by the 2nd respondent must be held to be a statement that is at variance of truth. This court records its consternation that a responsible officer like the 2nd respondent should have taken such wanton liberty with the truth in a sworn statement made in the affidavit filed before this court. When admittedly no limited recruitment was conducted and the proceedings dated 27-09-2002 do not state either expressly or by compelling obligation that any of the candidate in Annexure-I have been appointed to the post of Assistant Divisional

Engineer by the method of limited recruitment, it is inconceivable as to how the 2nd respondent could have stated that some of the candidates figuring in Annexure-I have been appointed by the method of limited recruitment. The 2nd respondent is not, in the considered view of this court, endowed with any power, authority or jurisdiction to over reach the service Regulations. The service Regulations are binding on both 1st and 2nd respondents. The Regulations have been in force and are not amended. The respondents are duty bound to comply with the Regulations, in particular Regulation 6 (b) in Part-III of the Regulations, while filling up the post of Assistant Divisional Engineers in the Engineering services of the 1st respondent. In the circumstances stated herein above, this court placed on record its severe condemnation of this conduct of the 2nd respondent in making a consciously incorrect statement of fact in paragraph No.3 of the counter affidavit filed on 21-03-2004.

As neither counter affidavit filed on behalf of the respondents by the 2nd respondent on 21-01-2004, nor the affidavit filed on 21-03-2004 by the said respondent, demonstrate factually that any limited recruitment, as envisaged in the Regulations, was followed. Of the 48 promotions made of Assistant Engineer to the category of Assistant Divisional Engineers, as reflected in Annexure-I to the 1st respondent's proceedings dated 27-09-2002, is, therefore, by the method of normal promotion of Assistant Engineers as Assistant Divisional Engineers. Such promotions of 48 persons *en bloc* and the promotion of 12 Additional Assistant Engineers as reflected in Annexure-II of the order constitutes a clear infraction of the mandate amended service Regulations, which require that out of five (5) successive vacancies arising in the category of Assistant Divisional Engineer, the first be filled up by a Graduate Engineer through limited recruitment, the next three by promotions from Assistant Engineers and fifth by promotion from Additional Assistant Engineers and Draughtsman Grade-I. Neither Annexure-I and Annexure-II of the 1st respondent's order 27-09-2002 do not conform to this unequivocal

and mandatory provisions of the Regulations. There is not even a whisper in the counter affidavits filed on behalf of the respondents as to why the unambiguous mandate of Regulation has been followed. Mr. Ravindranath, learned standing counsel for the respondents would faintly advances an argument that the promotions were effected in the exigency of services. What were the administrative compulsions of such magnitude that coerce the administration of the 1st respondent to consciously violate the statutory rules, the respondents have not chosen to place before this court to observe the appellation of legitimate administration the respondents are obligated to follow the Regulations framed by them in the interest of efficiency of the organization. Regnal of consistent violation of the Regulations will denude the 1st respondent's organization, the State within the meaning of Article 12 of the Constitution of India, of merely and legal legitimacy to a rule of law Society/organization. As nothing has been stated as to the compulsion underlying the clear violation of statutory Regulations, it may legitimately be inferred that there is no reasonable cause for effecting the appointments to the category of Assistant Divisional Engineers in clearly transgression of statutory Regulations. The eschewing of the process of limited recruitment contrary to the mandate of the Regulations constitutes a subversion of the object of the Regulations viz., filling up of 20% of vacancies in the higher category of Assistant Divisional Engineers from the cream of Graduate Assistant Engineers identified by the special process of limited recruitment, an identification which requires the rigor of written in addition to other parameters set up in the Regulations. The claim of the petitioners for entitlement to 17 vacancies on account of 51 promotions made of Graduate Engineers is also resisted on the ground that promotion of 41 Graduate Engineers is in the interest of efficiency of the services. The eschewing of limited recruitment mode is clearly illustrative of the total lack of purposes of the respondents in eschewing administrative efficiency in the higher cadres of Assistant Divisional Engineers by the method mandated by the service Regulations. This claim of the respondents to the profess object of achieving administrative efficiency by promoting 48 Graduate

Engineers as against the 12 non-Graduate Engineers so promoted is, therefore, not only contrary to the Regulations, but also misconceived.

If limited recruitment has been eschewed by the respondents, as has been demonstrated without a modicum of efficiency, it is apparent that the order of ratio 1:3:1 mandated by the service Regulations, has been eclipsed by a volitional conduct of the respondents. They have only followed the second component of three and the third component also viz., the normal promotion of Assistant Engineers and the normal promotion of Additional Assistant Engineers/Draughtsman Grade-I. Therefore, after every three promotions of Assistant Engineers as Assistant Additional Engineers, one Additional Assistant Engineer/Draughtsman Grade-I has to be promoted as Assistant Additional Engineer. Even this has not been done and *en bloc* promotions of Assistant Engineers and Additional Assistant Engineers have been reflected in Annexures-I & II respectively of the 1st respondent's proceedings dated 27-09-2002.

Subsequent promotion of three Assistant Engineers as Assistant Divisional Engineers by proceedings N.O.O (CGM-HRD) Rt. No. 184 dated 18-12-2002 is also claimed by the petitioners to be part of the promotions of 48 Assistant Engineers, who were promoted by the proceedings dated 27-09-2002 in accordance with the substantive procedure ordained in the Regulations, the respondents ought to have successive existing vacancies in blocks/units of five (5) vacancies for complying with the Regulations and making promotions by the three methods viz., (a) limited recruitment (b) promotion from amongst Assistant Engineers and (c) promotions from Additional Assistant Engineers/Draughtsman Grade-I. As this discipline which is *sine quo non* for giving effect to the substantive values underlying the Regulations has not been followed, in the considered view of this court, the promotions effect both by proceedings dated 27-09-2002 and by the subsequent proceedings dated 18-12-2002 must be

construed as inconsistent with and subversive of the mandate of the Regulations. It is not, however, possible in this chaotic situation brought about by the conscious violation of the statutory rules by the 1st respondent, to identify which of the Assistant Engineers have been illegally promoted as Assistant Divisional Engineers in excess of the quota mandate by the service Regulations in the context of fact that no limited recruitment has been pursued. However, as the omnibus promotions made of the Assistant Engineers and Additional Assistant Engineers/Draughtsman Grade-I *en bloc* in Annexures-I & II are declared as violative of the Regulations. To rectify this clearly illegal and to legitimize the filling up of the vacancies in the post of Assistant Divisional Engineers, it is necessary that the 1st and 2nd respondents should review of the promotions made by dividing all existing vacancies in the post of Assistant Divisional Engineers whether there are more than five into units or blocks of five vacancies each and to fill up the vacancies in each of such block of five vacancies strictly in accordance with the Regulations viz., filling up the first vacancy in each block from amongst Assistant Engineers by the method of limited recruitment by following the procedure for such limited recruitment strictly and without demur, then filling up the next three vacancies by the method of promotion from amongst the Assistant Engineers and thereafter to fill up the fifth vacancies by the method of promotion from amongst officers belonging to the cadre of Additional Assistant Engineers/Draughtsman Grade-I. The 1st and 2nd respondents are accordingly directed to review the promotions/appointments made to the category of Additional Divisional Engineers by the proceedings N.O.O. (CGM-HRD) Rt.No. 120 dated 27-09-2002 and N.O.O. (CGM.HRD) Rt. No.184 dated 18-12-2002. The respondents shall treat the promotions to the post of Assistant Divisional Engineers made by the aforesaid proceedings as provisional and shall consider the vacancies filled up by promotions effected in the other proceedings as existing vacancies for the purpose of complying with the service Regulations to these vacancies in excess, there are over bearing and clearly compelling

reasons that disable the conduct of limited recruitment examination with the urgency and discharge warranted by the values projected by the service Regulations, the respondents shall keep the first vacancy in every block of five vacancies unfilled or may resort to temporary promotions, which are liable to be substituted by a regular recruitment to such vacancies by the method of limited recruitment. Before conducting the review, the 1st and 2nd respondents shall with expedition necessitates to conform to the time frame ordained by this court; also comply with the principles of natural justice, if found warranted. In no case, however, would be it legitimate for the respondents to pass off normal promotions as a limited recruitment as such a procedure would constitute a harassy of the service Regulations and would clearly be subversive of the public interest. In the circumstances of the case, the writ petition is disposed of directing the respondents to conduct the review aforesaid with utmost expedition in any case within a period of two months from the date of receipt of a copy of this order. No costs.

GODA RAGHURAM, J

Dt. 30-06-2004

Pvks/*

To

1. The Chairman-Cum-Managing Director, A.P.Northern Power

Distribution Co.Ltd., Warangal

2. The Chief General Manager (HRD), Northern Power Distribution
Co.of A.P.Ltd.,Warangal District

3. 2CD copies